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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of EVELYN AND
EDGAR WILLIAMS.

EVELYN WILLIAMS,

Respondent,

v.

EDGAR WILLIAMS,

Appellant.

E041463

(Super.Ct.No. SBFSS73616)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Duke D. Rouse, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Edmund L. Montgomery for Appellant.

Kenneth L. Egans for Respondent.

After a short cause divorce trial on visitation and support issues, the trial court awarded Evelyn Williams (wife) child support of \$713 per month and spousal support of

\$939 per month. Her former husband, Edgar Williams (husband), appeals, contending the trial court abused its discretion in awarding spousal support in an amount which is unsupported by the evidence. Finding no abuse of discretion, we affirm.

I. FACTS

Wife and husband were married on August 4, 1983. After being married for 19 years 8 months, they separated on April 14, 2003. Wife alleged there were two minor children of the marriage.¹ At the time of trial, there was one minor child at home.

The case came to trial on September 30, 2005. The issues to be tried were child custody, child visitation, child support, and spousal support. After trial, the court set child support for the one remaining minor child at \$713 per month, plus one-half of actual child care expense. The sum of \$713 was based on calculations generated by a computer software program. After disposing of other issues, the court made spousal support findings pursuant to Family Code section 4320² and ordered husband to pay wife \$939 per month for spousal support.

After hearing a motion for reconsideration of the amount of spousal support, the trial court's intended decision was confirmed. However, the court changed the child support to \$582 per month and attached a new computer software calculation to support that amount. This appeal followed.

¹ Husband states there were four children, with one minor child remaining in the home. The record also references two other adult children.

² All further statutory references are to section 4320 of the Family Code unless otherwise indicated.

II. DISCUSSION

Husband begins his argument by citing *In re Marriage of Smith* (1990) 225 Cal.App.3d 469: “[Former] ‘[Section] 4801[, subdivision] (a), while giving the court broad *discretion* over spousal support . . . imposes a set of *mandatory guidelines* that the court “shall” consider in making its determination. As indicated, spousal support orders that do not reflect a weighing of these statutory factors are subject to reversal for *abuse of discretion*. [Citation.]’ [Citations.] [¶] The trial court is bound to consider the guidelines contained in [former] section 4801, subdivision (a), ‘but the ultimate decision rests within the court’s “broad discretion.” A trial court’s exercise of discretion will not be disturbed on appeal unless, *as a matter of law*, an abuse of discretion is shown—i.e.,—where, considering all the relevant circumstances, the court has “exceeded the bounds of reason” or it can “fairly be said” that no judge would reasonably make the same order under the same circumstances. [Citations.]’ [Citations.]” (*Id.* at pp. 479-480.)

Husband also cites *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269: “Spousal support is governed by statute. [Citation.] In ordering spousal support, the trial court *must* consider and weigh all of the circumstances enumerated in the statute, to the extent they are relevant to the case before it. [Citations.] The first of the enumerated circumstances, the marital standard of living, is relevant as a reference point against which the other statutory factors are to be weighed. [Citations.]” (*Id.* at pp. 302-303.)

Cheriton also states: “‘In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case

before it.’ [Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the ‘court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.’ [Citation.] Furthermore, the court does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support. [Citations.] Failure to do so is reversible error. [Citations.]” (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th at p. 304.)

Acknowledging the heavy appellate burden imposed by these cases, husband contends the trial court misapplied the statutory factors and there is a lack of evidence to support the trial court’s conclusion.

In its intended decision, the trial court reviewed the statutory factors set forth in section 4320 but did not state how the particular amount of \$939 was arrived at. No further explanation was provided in its ruling on the motion to reconsider.

The first statutory circumstance the court must consider is: “(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. [¶] (2) The extent to which the supported

party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties." (Subd. (a).)

The notice of intended decision states: "This was a long marriage of nineteen (19) years and eight (8) months. The Marital Standard of Living was middle class. [¶] (a) The earnings of each together are insufficient to afford each a Pre-Dissolution Standard of Living. [¶] (1) Both parties have marketable skills and are currently fully employed with those skills. [¶] (2) N/A." The trial court thus found that the earnings of the parties were not sufficient to maintain their previous standard of living.

The trial court found subdivision (b) inapplicable. Subdivision (c) states: "The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living." Considering this circumstance, the trial court found that husband has the ability to provide support for wife.

Subdivision (d) obliges the court to consider "[t]he needs of each party based on the standard of living established during the marriage." The trial court found that neither party could currently meet the preseparation standard of living.

Subdivision (e) states that the trial court must consider "[t]he obligations and assets, including the separate property, of each party." Under this subdivision, the court noted: "All will be paid with the home refinancing."

Subdivision (f) relates to the duration of the marriage, and the trial court merely noted that this had been a long marriage.

Subdivision (g) states: “The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.” The trial court found that both parties were currently fully employed.

The trial court found no evidence relating to subdivisions (h), (i), and (j). Subdivision (k) requires the trial court to consider the balance of hardships to each party. The intended decision merely states that the factor was taken into consideration.

Subdivisions (l) and (m) were found inapplicable and the catch-all provision of subdivision (n), relating to other factors found just and equitable, was not mentioned.

Since the trial court did consider the applicable statutory factors, husband is hard pressed to show an abuse of discretion, even though the basis for the ultimate award of \$939 is unclear. For example, it is not an abuse of discretion for the court to consider wife’s current standard of living in setting the spousal support amount, rather than the marital standard of living. (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1560.)

“An award of spousal support is a determination to be made by the trial court in each case before it, based upon the facts and equities of that case, after weighing each of the circumstances and applicable statutory guidelines. [Citation.] In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it. ‘The issue of spousal support, including its purpose, is one which is truly personal to the parties.’ [Citation.] In

awarding spousal support, the court must consider the mandatory guidelines of section 4320. Once the court does so, the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.] ‘Because trial courts have such broad discretion, appellate courts must act with cautious judicial restraint in reviewing these orders.’ [Citation.]” (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.)

Rather than discussing the trial court’s application, or misapplication, of the statutory factors, husband turns to a review of the evidence. His apparent theory is that a decision which is not supported by substantial evidence is an abuse of discretion.

Husband concedes that the issue of spousal support was an issue at the trial. Wife testified as to her current employment and work history. She asked the court for spousal support, and husband focuses on the following colloquy:

“[Wife’s counsel]: [A]re you asking this Court to at least leave the current spousal support order in effect, or is there a spousal support order at this time?

“[Wife]: Yes.

“[Wife’s counsel]: And how much is that?

“[Wife]: [\$]174, I think.

“[Wife’s counsel]: \$174 a month?

“[Wife]: Right.

“[Wife’s counsel]: Okay. So you’re not asking the Court [to] leave that in effect?

“[Wife]: No.”

Husband interprets this exchange to mean that wife was only asking that the current spousal support order of \$174 a month remain in effect. We disagree, and find that the testimony speaks for itself. In any event, the requests of a party are not determinative of the issue.

Husband cites extensive testimony about the couple's finances. He also notes that, in closing argument, his counsel asked that spousal support be continued at \$174 per month, or lowered. Wife asked for spousal support of at least \$500 per month.³

Although husband finds this testimony insufficient, he ignores the extensive documentary evidence of the couple's finances. The parties had submitted income and expense declarations with supporting documentation, and agreed and disputed financial issues were extensively discussed in the trial briefs. The court also heard testimony on financial issues in connection with the child support, division of community property, and other issues. Wife also filed an additional financial declaration prior to the hearing on the motion for reconsideration.

The trial court was therefore fully aware of the financial situation of the parties, and it had ample basis to determine and apply the circumstances in section 4320. For example, it was aware of the ability of husband "to pay spousal support, taking into account [his] earning capacity, earned and unearned income, assets, and standard of living." (Subd. (c).) It also had information about the obligations and assets, including the separate property, of each party. (Subd. (e).) Although husband argues that the trial

³ In her trial brief, wife asked for spousal support of \$425 per month.

court should have set the spousal support in an amount which would produce equal incomes for both parties, nothing in the statute supports the argument or requires that result. Even though husband considers the current order a hardship, the court took into consideration the section of the statute requiring a balancing of hardships. (Subd. (k).)

Since the trial court considered the requisite statutory factors, we cannot find that it abused its discretion in the weight it gave to the various factors. (*In re Marriage of Kerr, supra*, 77 Cal.App.4th at p. 93.) Since the trial court has broad discretion in applying the statutory factors, and in setting the amount of spousal support, we cannot find that the amount selected was so unreasonable as to be an abuse of discretion.

Even if we consider the issue as a substantial evidence issue, it is apparent that the evidence was sufficient for the trial court to conclude that an award of spousal support was proper. Although the basis for the amount chosen is unclear, the trial court had ample financial information before it to use as the basis for its conclusion.

III. DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

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/s/ King
J.

We concur:

/s/ Richli
Acting P.J.

/s/ Miller
J.